

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

June 29, 1992
AO-92-12

Senator David H. Locke
State House
Room 306
Boston, MA 02133

Re: Payment of Toll Free Number

Dear Senator Locke:

This letter is in response to your March 11, 1992, request for an advisory opinion regarding the propriety of having your political committee pay for a toll free number which will be advertised for the convenience of those voters in your Senate District who live in the 508 area code and who wish to contact you at the state house. I apologize for the delay in my response.

You have stated that the primary, if not the sole, purpose of this expenditure is political. Specifically, you state that although you are proud of your record of availability to your constituents, your political opponents routinely challenge your accessibility. While those constituents who have contacted your office know that such a charge is without foundation, it is an easy and potentially damaging charge to make. It is also difficult to counter with the vast majority of constituents who never or rarely seek personal assistance from their state senator. Your purpose in installing the 1-800 number is to allow you to advertise your full-time availability to the voters of your district and to counteract the false charges routinely made by your political opponents. It is your intention to make the 1-800 number known in your campaign literature, brochures, and other advertisements. All charges relative to the 1-800 number will be directly billed to your campaign account.

You further state that you are aware of this Office's interpretation of "personal use" to include any non-political use such as business, governmental, legislative, family, and

social use. In this context you state that the toll free number is not proposed for the purpose of assisting in or enhancing your legislative efforts and that neither you nor your office will provide any legislative or governmental service which is not already fully available to each and every constituent in your legislative district.

The campaign finance laws and the regulations promulgated pursuant thereto provide that political committees, such as yours, may make expenditures "for the enhancement of [your] political future . . . so long as such expenditure is not primarily for the candidate's or any other person's personal use" See M.G.L. c.55, s.6 and 970 CMR 2.00 et seq.¹ As you note in your letter, this Office has concluded that the word "personal use" includes any non-political use including governmental and/or legislative use. See AO-91-06. Therefore, the question is whether the 1-800 number is primarily a "personal use" within the context of chapter 55. For the reasons set forth below, I conclude that it is not.

The primary purpose of the 1-800 number is not to offer a new governmental or legislative service. Rather, it is to respond to certain political matters which have been raised by political opponents. In addition, you plan to use the existence of the 1-800 number to promote your accessibility. Although the stated purpose or motivation behind establishing the 1-800 number is political, it will, in this Office's opinion, also enhance your office's legislative service since constituents will be able to seek help using the toll free number. Arguably, this would be a personal use within the meaning of chapter 55. However, this Office has recognized that certain activities inherently serve both political and legislative purposes in a manner which is not divisible. See AO-92-10 which concluded that a political committee may pay for a trip to a sister city even though the trip has both political and governmental aspects to it. In this case, it is this Office's opinion that even if the proposed expenditure provides an incidental governmental benefit, its primary purpose is political. Therefore, your political committee may pay for the cost of the 1-800 telephone service.

1. Note that section 2.05(2)(h), made applicable to your political committee by 2.06(1), provides that political committees may make reasonable and necessary expenditures in connection with campaign office telephones, the use of which is restricted to campaign purposes. Since the regulation concerns campaign office telephones, and not telephone service to your legislative office, this section is inapplicable and the answer must be determined by looking to the broader principles established by M.G.L. c.55, s.6.

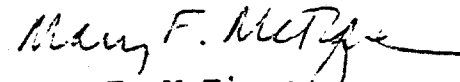
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I would caution you that although the political committee may pay for this toll free service, the service may be used only in a manner consistent with your office's legislative responsibilities and not for campaign purposes such as fundraising, polling, election day "get-out-the-vote" drives and the like without violating the campaign finance law's prohibition against the use of public resources for political purposes. See Anderson v. City of Boston, 376 Mass. 178 (1978) and Interpretative Bulletin OCPF-IB-91-01.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have any questions regarding this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director